

## THE INSURED'S OBLIGATION TO COOPERATE

Is it an easy task to convince the Court of the insured's lack of cooperation?

Caroline Tremblay, Gilbert Simard Tremblay | S.E.N.C.R.L.



The principle is well known: In order to be indemnified, the insured has, toward his insurer in the course of the latter's investigation, the obligation to cooperate. Said principle is codified at Section 2471 of the *Quebec Civil Code*:

*"At the request of the insurer, the insured shall inform the insurer as soon as possible of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the insured property, the rights of third persons, and any concurrent insurance; he shall also furnish him with vouchers and attest under oath to the truth of the information.*

*Where, for a serious reason, the insured is unable to fulfill such obligation, he is entitled to a reasonable time in which to do so.*

*If the insured fails to fulfill his obligation, any interested person may do so on his behalf."*

The main objective of the obligation to cooperate is to allow the insurer to complete its investigation by gathering all of the relevant information as to the circumstances of the loss, and the whole to avoid being at its insured's mercy<sup>1</sup>.

In the judgment rendered in the matter of *Armtec Ltd*<sup>2</sup>, the Court of Appeal reiterated the principle that the insured who refuses to cooperate may lose his right to be indemnified. However, the delay to provide the proof of loss will only postpone the payment of the indemnity, in accordance with Section 2473 of the *Quebec Civil Code*, which provides that the insurer is bound to pay the indemnity within sixty days,

after receiving the notice of loss or, at his request, the relevant information and vouchers.

It appears from the Quebec caselaw that the Courts are demanding regarding the proof of the lack of cooperation of the insured. The recent decision of the Court of Appeal in the matter of *Promutuel Les Prairies, société mutuelle d'assurances générales vs. Selmay*<sup>3</sup> is a good example.

In first instance, Promutuel was condemned to reimburse its insured, Mr. Selmay, the amount of \$54,998.91 following a fire that caused great damages to his garage.

Even though Promutuel acknowledged the existence of the insurance contract, it alleged that the insured lost his right to be indemnified since he refused to cooperate. According to Justice Castiglio:

*"La conduite de Selmay avec les différents intervenants a certainement contribué à rendre plus difficile le travail de l'assureur. Promutuel est effectivement confronté à un assuré arrogant, revendicateur, voire désagréable."*

Despite the uncompromising and inflexible behavior of the insured, Justice Castiglio refused to assimilate said behavior to a lack of cooperation since the insurance company was able to conduct and complete its investigation. Said judgment was confirmed by the Court of Appeal<sup>4</sup>.

The following situations have been considered by the Courts as a breach of the obligation to cooperate:

- The insured's refusal to provide a declaration regarding the circumstances surrounding the theft of his vehicle, despite the adjuster's warnings regarding the consequences of said refusal<sup>5</sup>;
- Following a fire, the insured's failure to inform his insurer of his spouse's confidence that she would be pleased if their house was set on fire<sup>6</sup>;

- When questioned as to the circumstances of the fire, the insured omitted to inform his insurance company that somebody offered to set his business on fire<sup>7</sup>.

In the light of the recent judgment of the Court of Appeal in the matter of Selmay and considering the judgments rendered regarding the extent of the insured's obligation to cooperate, insurers must keep in mind that an uncompromising, intransigent and inflexible attitude does not necessarily constitute a failure on the part of the insured to comply with his obligations. Despite the insured's attitude, if the insurer is able to conduct its investigation, it will not be able to invoke the lack of its insured's cooperation to justify its refusal to indemnify.

1. LLUELLES, Didier. *Précis des assurances terrestres*, 5<sup>e</sup> Edition, Les Éditions Thémis, 2009. See also: *La Nordique Compagnie d'Assurance du Canada vs. Imperial Tobacco Canada Limited*, (December 9, 2004), Montreal 500-17-019268-047(S.C.) and *Laflotte vs. Le Groupe Commerce Compagnie d'Assurances* (November 19, 1998), St-François 450-02-001742-959 (Q.C.).

2. *Armtec Ltd vs. Exportation et développement Canada/Export Development Canada*, 2007 QCCA 99.

3. 2011 QCCA 524.

4. For other judgments where the means of defense based on the refusal of cooperate were dismissed, see: *Tremblay vs. Promutuel Bagot* (May 5, 2003), Saint-Hyacinthe 750-17-000242-010 (S.C.), *Di Capua and al. vs. Fonds d'Assurance responsabilité professionnelle du Barreau du Québec*, [2003] R.R.A. 750 and *Axa Assurances inc. and al. vs. Beauregard and al.* [2001] R.R.A. 470 (S.C.).

5. *Laflotte vs. Le Groupe Commerce Compagnie d'Assurances* (November 19, 1998), St-François 450-02-001742-959 (Q.C.).

6. *Dubuc and al. vs. Promutuel Lotbinière* (August 3, 2006), Quebec 200-05-015499-010 (Q.C.).

7. *Cyr vs. Le Groupe La Laurentienne* (October 14, 1988), Quebec 200-09-000144-847 (C.A.).

